

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4370

IN THE MATTER OF:

Served August 19, 1994

Application of A-1 TRANSPORTATION)
INC., for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-94-25

By application accepted for filing June 7, 1994, A-1 Transportation, Inc. (A-1 or applicant), a Virginia corporation, seeks a certificate of authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

Notice of this application was served on June 8, 1994, in Order No. 4310, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication and a statement indicating whether any of applicant's shareholders holds shares in A-1 Limousine, Inc. (A-1 Limo), a non-WMATC carrier, and describing any transportation offered by A-1 Limo in the Metropolitan District. Applicant complied. The application is unopposed.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, applicant's corporate status, facilities, proposed tariff, finances, and regulatory compliance record.

Applicant's Vice President is a substantial shareholder of applicant and a Vice President of A-1 Limo, which conducts operations in the Metropolitan District but not outside Virginia. Applicant and A-1 Limo have no shareholders in common. Applicant certifies that neither applicant nor any person holding an equity interest in applicant has ever held any equity interest in any carrier that now holds or has ever held or applied for WMATC operating authority.

Applicant proposes commencing operations with four 12-passenger vans, two 6-passenger limousines, and four 4-passenger sedans. Applicant has been formed primarily for the purpose of providing airline crew transportation between airports and other locations in the Metropolitan District. Applicant's proposed tariff contains hourly group charter rates with minimum charges.

Applicant filed a balance sheet as of May 19, 1994, showing assets of \$43,000; liabilities of \$3,000; and equity of \$40,000. Applicant's projected operating statement for the first twelve months of WMATC operations shows revenue of \$658,000; operating expenses of \$231,550; and operating profit of \$426,450.

Applicant certifies it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

- (i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and
- (ii) that the transportation is consistent with the public interest.

Based on the evidence in this record, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation is consistent with the public interest.

Because applicant is under common control with A-1 Limo, this case also is governed by Title II, Article XII, Section 3,¹ which provides in pertinent part that a "carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to . . . acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means." The Commission may approve such a transaction if it is consistent with the public interest.²

Prior to the 1990 amendment of the Compact, effective 1991, the public interest analysis in an acquisition through ownership of stock focused on the fitness of the acquiring party, the fairness of the purchase price, the resulting competitive balance, any dormancy of operating rights, the benefits to the riding public, and the interest

¹ In re McLean School Bus Serv., Inc., No. AP-94-28, Order No. 4356 (Aug. 2, 1994); In re Washington-Dulles Transp., Ltd., No. AP-94-16, Order No. 4315 (June 9, 1994); In re Executive Coach, Ltd., No. AP-91-12, Order No. 3666 (Apr. 2, 1991); In re Airport Limo, Inc., No. AP-78-56, Order No. 2001 (June 6, 1979).

² Order No. 4356; Order No. 4315; Order No. 3666; Order No. 2001.

of affected employees.³ The purchase price and dormancy inquiries are no longer relevant under the amended Compact.⁴

Analysis of the four surviving factors supports a finding here of consistency with the public interest. First, the pertinent acquiring party in this case is applicant's owner/vice-president, who also is a controlling officer of A-1 Limo. Our current finding of applicant's fitness permits an inference of the acquiring party's fitness.⁵ Second, the benefit to the riding public derives from the increased competition in transportation service that this application portends, which is presumptively in the public interest.⁶ Third, applicant's employees presumably have an interest in seeing their employer obtain valuable new operating rights.⁷

With respect to the resulting competitive balance, only one of these two commonly-controlled carriers will operate in the market we regulate. According to applicant, A-1 Limo's operations are confined to Virginia. Under the Compact, Title II, Article XI, Section 3(g), such service is excluded from our jurisdiction.⁸ There is nothing in the record suggesting that A-1 Limo's operations, which are beyond our control, can be utilized by applicant to disadvantage applicant's potential competitors, which are within our control. In any event, none of applicant's potential competitors has entered a protest.

We find that the proposed common control of applicant and A-1 Limo is consistent with the public interest. Each carrier is admonished to keep its assets, books and operations completely separate from the other's.⁹ Sharing of office space and parking facilities will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.¹⁰

³ D.C. CODE ANN. § 1-2414 (1992); In re D.C. Ducks, Inc., No. AP-94-21, Order No. 4361 (Aug. 9, 1994); Order No. 4356; In re Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. AP-94-26, Order No. 4354 (Aug. 1, 1994); In re George A. Coupe, Bernard Resnick & Executive Limo. Serv., Inc., No. AP-81-23, Order No. 2321 (Mar. 4, 1982).

⁴ Order No. 4361; Order No. 4356; Order No. 4354.

⁵ Order No. 4361; Order No. 4356.

⁶ Order No. 4361; Order No. 4356; Order No. 4354.

⁷ Order No. 4361; Order No. 4356; Order No. 4354. To the extent we are charged with safeguarding the interests of employees of A-1 Limo -- a non-WMATC carrier -- our concerns are allayed by the lack of common ownership.

⁸ In re Central Delivery Serv., Inc., No. 271, Order No. 1432 (May 27, 1975).

⁹ Order No. 4356.

¹⁰ Id.

Of course, applicant may lease vehicles from A-1 Limo, but applicant is reminded that Commission Regulation No. 62-02 mandates that vehicles operated by a carrier as lessee "shall be operated by, and under the complete control of, the lessee, and no other, for the entire period of the lease," and that during said period "neither the lessor nor the lessee shall enter into any other . . . lease or sublease of the same vehicle(s) without the approval of the Commission." This would preclude applicant and A-1 Limo from operating the same vehicles during the term of the lease or leases.

THEREFORE, IT IS ORDERED:

1. That A-1 Transportation, Inc., 3137 Holloway Road, Falls Church, VA 22042, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

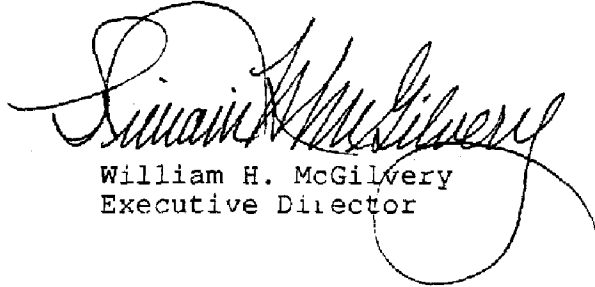
2. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 268 is hereby assigned.

3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 268 shall be issued to applicant.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

5. That unless applicant complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director